



## Demand Response Sales and Services Agreement

This Demand Response Sales and Services Agreement (this "Agreement"), effective as of \_\_\_\_\_ ("Effective Date"), the scope of which is described more fully below, is made by and between EnerNOC, Inc. ("EnerNOC"), located at 101 Federal St., Suite 1100, Boston, MA 02110, and San Luis Obispo County Flood Control and Water Conservation District ("Customer"), located at County Government Center, Room 207, San Luis Obispo, CA 93408. EnerNOC and Customer are defined herein as the Parties ("Parties") to this Agreement.

1. **Term.** This Agreement shall commence on the Effective Date and end 59 months following the Effective Date (the "Term").
2. **EnerNOC Managed Services**
  - a. **Scope of Services.** EnerNOC agrees to manage Customer's participation in the demand response program(s), as further described in Attachment(s) A-1 attached hereto (each individually the "Program" and collectively, the "Programs"), in accordance with the rules set forth by the applicable independent system/grid operator and/or utility, which are subject to amendment by the applicable independent system/grid operator and/or utility from time to time. EnerNOC will (i) work with Customer to develop an appropriate curtailment plan for Customer's business; (ii) complete all necessary permits and associated reporting on Customer's behalf; (iii) register Customer's Accepted Capacity (as defined in Attachment(s) A-1); (iv) manage Customer's curtailable electrical capacity in the Programs and, upon notification by EnerNOC and acceptance by Customer, provide real-time support to Customer during demand response events ("Demand Response Events") via, at Customer's sole discretion, direct load control or manual implementation by Customer, as applicable; and (v) reconcile all Program payments in accordance with the rules set forth by the applicable independent system/grid operator and/or utility and as further described in Attachment(s) A-1. In addition, as necessary, EnerNOC will coordinate with Customer's host utility to capture kilowatt-hour (kWh) pulses from the Customer's primary utility meter to provide Customer near real-time, Internet-enabled power monitoring.
  - b. **EnerNOC System.** EnerNOC, as it deems necessary and at its sole option, may equip one or more of Customer facility address (each a "Site Address") as identified on Attachment(s) A-2 hereto with the EnerNOC system, which includes an EnerNOC Site Server ("ESS") that can, at Customer's sole discretion, enable remote generator start/stop, and/or direct load management, power metering, data collection, near real-time data communication, and Internet-based reporting and analytics. Subsequent to the date hereof, Attachment(s) A-2 may be updated in writing from time to time by the Parties to reflect additional Site Addresses.
3. **Customer Support Requirements**
  - a. **ESS Installation.** Within fourteen (14) days of execution by Customer of this Agreement, Customer shall provide EnerNOC with reasonable access to install a cellular connectivity device that allows for Internet-based communication of Site Address' electricity consumption and Demand Response Event performance.
  - b. **Acceptance Testing.** Customer agrees to collaborate with EnerNOC in testing the ESS at each Site Address where the ESS is installed in a timely manner prior to registering with the Program(s).
  - c. **Event Performance.** Customer agrees to use commercially reasonable efforts to generate and/or reduce electrical demand to achieve Accepted Capacity as defined in Attachment(s) A-1 at each Site Address when notified by EnerNOC during Demand Response Events. Customer and EnerNOC understand that the curtailable electrical capacity identified in Attachment(s) A-2 does not represent Accepted Capacity and is solely the Parties' best estimate of performance and that Accepted Capacity may vary.
  - d. **Nondisclosure to Third Parties.** Customer and EnerNOC acknowledge that in its relationship with the other Party, it may receive information including (but without limitation): confidential information, business strategies, financial information, information relating to the ESS and the EnerNOC System, and information contained in this Agreement, including the terms of the revenue sharing arrangement described in Attachment(s) A-1 (all collectively "Confidential information"). Except as required by applicable law or regulation or as expressly set forth in Subsection 3(f) hereof, neither Party shall disclose any Confidential Information to any third party or allow any third party access to such Confidential Information.
  - e. **Trade Secret Protection Obligations.** Customer shall not alter, reverse engineer, disassemble, decompile or copy the ESS or any other EnerNOC System components and shall not allow any third party to use, access, or examine the ESS or any other EnerNOC System components.
  - f. **Use of Confidential Information.** Notwithstanding anything contained herein to the contrary, Customer acknowledges that EnerNOC may receive Confidential Information of Customer through data collected by the ESS and the EnerNOC System, which may be disclosed by EnerNOC (i) to the applicable independent system/grid operator and/or utility as solely necessary for the performance of this Agreement and (ii) to any subcontractors or other agents of EnerNOC.
  - g. **Service Provider Limitation.** Customer agrees not to contract with any other demand response service provider for the Term of this Agreement.
4. **General Terms**
  - a. **Limitation on Liability.** EnerNOC's liability hereunder is limited to direct actual damages as the sole and exclusive remedy, and total damages shall not exceed the lesser of (i) the total amount paid to Customer under this Agreement during the twelve-month period immediately preceding the event giving rise to the claim(s) or (ii) \$100,000. All other remedies or damages (at law, in equity, tort, contract, or otherwise) are expressly waived, including any indirect, punitive, special, consequential, or





- incidental damages, lost profit, or other business interruption damages.
- b. **Choice of Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California, without giving effect to choice of law rules.
- c. **Miscellaneous.** Customer may not assign any of its rights or delegate any of its performance obligations hereunder without the prior written consent of EnerNOC. This Agreement contains the entire agreement between Customer and EnerNOC and may only be amended in writing signed by each of the Parties. If any of its provisions shall be held invalid or unenforceable, this Agreement shall be construed as if not containing those provisions and the rights and obligations of the Parties hereto shall be construed and enforced accordingly. This Agreement shall be binding upon the Parties together with their successors and assigns.
- d. **Force Majeure.** The Parties shall be excused for any failure or delay in the performance of their obligations hereunder due to acts of God or any other legitimate cause beyond their reasonable control.
- e. **Termination.** Either Party may terminate this Agreement immediately if the Program(s) is materially altered, suspended or ended.
- f. **Notices.** Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery company; or (4) by United States first class registered or certified mail, postage prepaid, return receipt requested, in each case, addressed to the Parties as follows (or to such other addresses as the Parties may request in writing by notice given pursuant to this Section): EnerNOC, Inc., Attn: Deputy General Counsel, 101 Federal Street, Suite 1100, Boston, MA 02110; and to the Customer at San Luis Obispo County Flood Control and Water Conservation District, Attn: Director of Public Works – Nacimneto Water Project, County Government Center Room 207, San Luis Obispo, CA 93408.
- g. **Insurance.** EnerNOC shall maintain

Commercial General Liability Insurance with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate  
Automobile Liability Insurance with limits of \$1,000,000 per occurrence combined single limit  
Workers' Compensation and Employers' Liability Insurance with limits of not less than \$500,000

All insurance carriers must have an AM Best rating of A-VIII or better. **Upon request of Customer**, Customer shall be listed as a certificate holder and additional insured on the Commercial General Liability policy. Customer shall be notified in writing at least thirty (30) days prior to cancellation of any insurance policy.

EnerNOC, Inc.

San Luis Obispo County  
Flood Control and Water Conservation District

Name: Michael Bertik

Name: \_\_\_\_\_

Title: Associate General Counsel

Title: Chairperson of the Board, San Luis Obispo County Flood Control and Water Conservation District, State of California

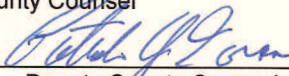
Signature: 

Signature: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM AND LEGAL EFFECT:

Rita Neal  
County Counsel

By:  \_\_\_\_\_  
Deputy County Counsel

By: \_\_\_\_\_  
County Clerk and Ex-Officio Clerk of the  
Board of Supervisors, San Luis Obispo County  
Flood Control and Water Conservation District,  
State of California

Date: 3/7/13, 2013

Date: \_\_\_\_\_, 20\_\_\_\_



## Attachment A-1

### EnerNOC Demand Response – Pacific Gas & Electric (PG&E)

1. **Program Description.** The EnerNOC demand response program compensates electricity users for reducing consumption when demand for electricity is high and system reliability is at risk. The Program is meant to help alleviate the potential for blackouts and brownouts by providing the utility with a resource to call upon in situations of system stress and high energy prices.
2. **Program Rules** - The terms of this Agreement will reflect the program terms and conditions of PG&E or the California Public Utilities Commission ("CPUC"), which may be amended from time to time. The current terms are summarized below:

<i>Program Availability</i>	Demand Response Events may only be called during non-holiday weekdays from 11:00 AM to 7:00 PM, from May 1 to October 31 (the "Program Period").
<i>Event Trigger</i>	Demand Response Events can be called at PG&E's discretion, but are usually prompted by repeated days of elevated temperatures or high energy prices.
<i>Advanced Notification</i>	Customer is expected to reduce demand by the start of the Demand Response Event and will be provided a minimum of 30 minutes advance notice. In addition to providing Demand Response Event notification, EnerNOC agrees to use commercially reasonable efforts to inform Customer that Demand Response Events are likely several hours or the day before based upon weather conditions, spot market prices, day-ahead program activations and other relevant information.
<i>Event Frequency &amp; Duration</i>	Demand Response Events may last between two (2) and six (6) hours. The annual hourly limitation is eighty (80) hours per year and no more than one Demand Response Event may be called per twenty-four (24) hour period.
<i>Testing Requirement</i>	PG&E may conduct a test demand response event up to two (2) times per year.

#### 3. Customer Capacity

- a. **Accepted Capacity.** For purposes of this Agreement, "Accepted Capacity" shall represent the best estimate of Customer's performance based on analysis of consumption data and pre-enrollment testing. Customer agrees that the Accepted Capacity may be adjusted by EnerNOC in the future to reflect actual performance, changes in facility operations, Program rules, regulations and/or other relevant information.
- b. **Delivered Capacity.** For purposes of this Agreement, "Delivered Capacity" shall be defined as the average difference between the measured energy demand (in kW) and baseline energy usage over each hourly interval of such Demand Response Event as measured by the ESS. If Delivered Capacity is not greater than 75% of Accepted Capacity for any given Demand Response Event hour, then Delivered Capacity for said Demand Response Event hour will equal 0 kW.

#### 4. Payments

- a. **Capacity Payments.** EnerNOC will pay Customer \$40.00 per kilowatt per year (the price for each month during the Program Period varies) multiplied by either (i) the Customer's Accepted Capacity if no Demand Response Events have been initiated, or (ii) the Customer's Delivered Capacity following a Demand Response Event ("Capacity Payment").
- b. **Energy Payments.** In months when one or more Demand Response Events are called, EnerNOC will pay Customer 75.00% of the Energy Payments available from PG&E to EnerNOC in connection with Customer responding to a Demand Response Event when notified by EnerNOC.
- c. **Payment Cap.** Capacity Payments are capped at 125% of Accepted Capacity payments and Energy Payments are capped at 150% of Accepted Capacity. EnerNOC may, at its discretion, remove minimum and maximum caps for a single Demand Response Event on a case-by-case basis as conditions warrant.
- d. **Underperformance.** *In no event shall Customer be penalized for underperformance or non-performance, other than to have future and/or event-month payments reduced to reflect Delivered Capacity as described in Section 3 above.*
- e. **Payment Timing.** EnerNOC shall make quarterly payments to Customer of Customer's share of all payments received by EnerNOC from PG&E during the preceding quarter in connection with Customer's participation in the Program. All Payments will be made within forty-five (45) days of EnerNOC's receipt of total quarterly payment from PG&E.
- f. **Timing of First Payment.** EnerNOC shall make all payments associated with Customer's participation in the Program to Customer on a quarterly basis, and such payments shall be made within forty-five (45) days of EnerNOC's receipt of total quarterly payment from PG&E.

### Attachment A-2

Site Name	Site Address	Estimated Capacity kW by Month	
Intake Pump Station of the Nacimiento Water Project	10707 Nacimiento Lake Drive Bradley, CA 93426	Jan	0
		Feb	0
		Mar	0
		Apr	0
		May	439
		Jun	735
		Jul	754
		Aug	769
		Sep	487
		Oct	447
		Nov	0
		Dec	0
Santa Ysabel Pump Station of the Nacimiento Water Project	1855 Santa Ysabel Road Paso Robles, CA 93422	Jan	0
		Feb	0
		Mar	0
		Apr	0
		May	160
		Jun	363
		Jul	363
		Aug	363
		Sep	160
		Oct	0
		Nov	0
		Dec	0
Rocky Canyon Pump Station of the Nacimiento Water Project	9050 Rocky Canyon Road Atascadero, CA 93422	Jan	0
		Feb	0
		Mar	0
		Apr	0
		May	275
		Jun	275
		Jul	275
		Aug	275
		Sep	275
		Oct	275
		Nov	0
		Dec	0